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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 BRIAN TERWILLEGER,

11 Plaintiff,

12 v.

13 STATE OF WASHINGTON, et al.,

14 Defendant.

CASE NO. 3:17-cv-05360-RJB-DWC

ORDER DENYING  
MISCELLANEOUS MOTION

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16 The District Court has referred this 42 U.S.C. § 1983 action to United State Magistrate  
17 Judge David W. Christel. Currently pending in this action is Plaintiff Brian Terwilleger's  
18 Miscellaneous ("Motion"). Dkt. 60.

19 Plaintiff first requests the Court preemptively decline to grant summary judgment and  
20 allow his case to move to trial. However, neither party has yet moved the Court for summary  
21 judgment. Therefore, Plaintiff's request is premature and the Court declines to grant it.

22 Second, Plaintiff requests that, if the Court identifies deficiencies in Plaintiff's  
23 Complaint, the Court allow him leave to amend under Rule 61. However, as Defendants  
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1 correctly note, Federal Rule of Civil Procedure 61 governs “harmless error” as it relates to  
2 setting aside a court order or other judgment. It does not apply to leave to amend a Complaint.  
3 Further, the Ninth Circuit has established that *pro se* litigants bringing civil rights actions must  
4 be given opportunity to amend their complaint to overcome deficiencies unless it is clear such  
5 deficiencies cannot be overcome by amendment. *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir.  
6 2000). However, the Court has not yet ruled on any deficiencies in Plaintiff’s current Complaint,  
7 and thus this request is also premature. The Court therefore denies Plaintiff’s prospective request  
8 to amend here.

9 Finally, Plaintiff requests the Court direct Defendants to respond to Plaintiff’s Complaint.  
10 However, Defendants have already filed their Answer. Dkt. 61. Thus, Plaintiff’s final request is  
11 moot.

12 For the reasons stated above, the Court denies Plaintiff’s Motion (Dkt. 60) without  
13 prejudice.

14 Dated this 26th day of March, 2018.

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17 David W. Christel  
18 United States Magistrate Judge  
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